

Committee on Legal Affairs
Working Group on Intellectual Property Rights and
Copyright Reform

Meeting of Thursday 12 February 2015 from 9:00 to 11:00
European Parliament, Strasbourg (Louise Weiss S4.5)

3. Exchange of views on publishing and copyright issues in the digital environment
(part I)

“The point of view of authors”

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Good morning Ladies and Gentlemen,

I thank the Chair and the “Working Group on IPR and Copyright Reform” for the invitation. I am the Secretary-General of the European Writers’ Council/ EWC, and also a writer.

EWC is the European federation of national associations and unions gathering over 160.000 professional European writers and literary translators in 34 countries, working altogether in 42 languages. These are authors who make their living or are trying to make a living from their writing career. They create in all genres, including but not limited to fiction, academic, educational, and non-fiction material, screen-writing, and children’s literature.

Nowadays there are more creative works available online in the EU. This is worthy of celebration.

The EU has millions of creators: authors nurture the inherent European cultural and language diversity, unique at a global scale.

- We all need to play a role in delivering innovative solutions for greater access to online content. We contribute with our creations. We also take risks.
 - Authors are more than eager to have their works made available: they write for the public: their readers (also called consumers).
 - **Writers are the foundation of the value-chain from author to reader** generating many jobs in publishing, and contributing with innovation in the digital economy.
 - **But such value-chain is built on a delicate balance:** changes in one end will affect other parts of the chain.
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Copyright and Remuneration

The relationship between copyright and remuneration is part of the commercial aspect of publishing in the digital environment.

Copyright is a legal right and the legal instrument that “grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the author to receive due payment.”

If copyright has been the enabler by giving an incentive for the creation of new works, for many writers, unfortunately, the digital age is escaping them. Therefore, in order for them to benefit from the full potential of the digital market-place, some measures are necessary.

Remuneration is directly related to primary and exclusive rights, and very often it is determined by the contractual relation between author and publisher. **Until now the EU legal framework has not intervened in this area.** The Directive 2001/29/EC (InfoSoc Directive) did not include a provision to ensure balanced contractual terms. We have evidence that this has not worked.

Remuneration rights are indispensable for authors at a time when there is a larger diversity of competitors in the digital markets, with multiple new players, emerging business models, and new sources of revenue for many. Remuneration is a right and as such it should not be overlooked, avoided, or denied, unless it is the author's choice to waive it.

But the right to remuneration is not enough: authors need a EU approach with clearly defined terms for adequate / fair / proportionate/ equitable remuneration for the uses of their works, both in print/analogue and digital forms.

The lack of balance in contractual negotiations¹ results in take-it-or-leave it coercive agreements and a set of abusive clauses, which must be stopped.

We need a ban on unfair clauses.

¹ *In some Member States collective agreements and collective bargaining are in place, but there are instances in which authors associations are not allowed to enter into collective bargaining; in other countries (EEA: Norway) there are binding standard contracts through negotiations set up by a national cluster of stakeholders including authors.*

The Evidence

1—In 2013, in the context of the EC consultation, EWC conducted a survey amongst EC member associations which confirmed that in the EU there are many unfair practices in the contractual agreements which deprive authors from receiving fair remuneration for their works. This is especially the case when a contract does not specify the digital uses, and has all inclusive or undefined terms or ambiguously defined conditions.

2—In 2014 we held an *evidence-based* forum at the European Parliament² addressing the challenges that affect European authors in the text and book sector in the value of their work. Here for example, there was a presentation of the UK survey conducted by ALCS showing alarming results.³

3—Next is the study by the European Parliament, was commissioned by the Legal Affairs Committee, “Contractual Arrangements Applicable to Creators: Law and Practice of Selected Member States”. We respectfully hope that the **Working Group Intellectual Property Rights and Copyright Reform** will consider the conclusion and recommendations (pp. 100-105). The conclusions call for an improvement of the level of fairness in copyright contracts, including digital exploitation, and propose inter alia an “unfair terms model”.

The contractual agreements in the majority of MS are not fit for the digital environments, especially because the authors’ rights to remuneration have diminished and as a consequence they are missing income from a variety of new uses. This is an effect of the agreements that tend to take their rights away.

4—On another level, we are looking forward to the forthcoming legal and economic study by the European Commission on contractual practices in publishing, complementing the one on music and the audio-visual sector.

5—In 2013 our informal network of **European Authors’ and Performers** organisations (about 15 associations) identified four areas in all authors and performers’ agreements in the EU that need an urgent solution. It is important to note that this is a **common-ground** for authors and performers **of all sectors**:

And these areas are:

- The Transfer of rights
- The Scope of rights
- The Rights to remuneration
- Grounds for cancellation of the contract, obligation of exploitation, and the reversion of rights

² “The Value of Writers’ Works”, Proceedings of the EWC Authors’ Rights Conference, European Parliament, 3 November 2014. Published in the Writers’ Series, 2015.

³ <http://www.alcs.co.uk/Documents/A-Free-for-All-Loughborough-research/what-are-words-worth-now.aspx>

—Last but not least, we are collecting numerous specific examples of typical unfair clauses.

Two examples of contractual terms that need to be tackled:

- *There should be a clear division between digital and printed exploitation. The digital and/or online rights should not be implicitly included as a mere 'extension' of the agreement.*
- *Online and digital or online uses should be distinguished and negotiated separately from analogue/print uses. Printed books are products and e-books are services; they correspond to two different modes of production and making available. Licensing terms and percentages should be explicitly stated and need to be distinguished from royalties pertaining to sales percentages. The contracts should reflect the different kinds of remuneration and formats of making available.*

The data on the authors' generally weaker negotiating position is still incomplete. Yet the evidence so far demonstrates additionally that in several if not the majority of Member States [writing as a main profession](#) is becoming [increasingly difficult](#), and that there is a regular decrease in the number of professional writers.

[This social phenomenon should be worrying](#) not only in terms of the job market but also because it impoverishes the European landscape of culture and language diversity.

In view of this tendency, the question, as a **red flag is**:

- **What can be done to stop the writing profession from gradually disappearing?**
- **We need to stop unfair contracts and abusive clauses at EU level.**

You have a key role to play to prevent that the diversity and multiplicity of works offered in Europe declines. This involves a responsibility to sustain and improve the working conditions of authors in the EU.

- A balance is needed between more access to works⁴ and the ability for authors to continue receiving due remuneration.

I appeal to you, distinguished Members of the European Parliament, to be instrumental in strengthening authors so that they can continue to create works that will enrich the lives of readers, viewers, listeners, users, and citizens in the present and the future.

Thank you for your attention.

⁴ For a true balance, authors should receive remuneration through fair contracts as well as compensation for exceptional uses.